

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 * * *

4 SALLY D. VILLAVERDE

Case No. 2:18-CV-00921-GMN-EJY

5 Plaintiff,

ORDER

6 v.

7 ROMEO ARANAS, et al,

8 Defendants.
9

10 Before the Court is Plaintiff's Motion for Appointment of Counsel. ECF No. 15.
11 Defendant's Opposition to Plaintiff's Motion for Counsel (ECF No. 19) was filed on December 16,
12 2019. No reply was timely filed.

13 A *pro se* litigant does not have a constitutional right to appointed counsel upon filing a 42
14 U.S.C. § 1983 civil rights claim. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Rather,
15 when considering the potential appointment of counsel for a *pro se* plaintiff, the Court must consider
16 whether there are "exceptional circumstances" warranting such an appointment. 28 U.S.C. §
17 1915(e)(1); *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (§ 1983 action). A plaintiff seeking
18 appointment of counsel must submit information to the Court that describes "the nature of the action,
19 . . . the belief that the person is entitled to redress," and "all assets [the person] possesses [showing]
20 that the person is unable to pay . . . fees or give security therefor." 28 U.S.C. § 1915(a).

21 Here, Plaintiff has submitted a coherent motion stating the nature of his actions, his belief
22 that he is entitled to monetary damages and injunctive relief, and that he is unable to pay for counsel
23 as an incarcerated individual proceeding *in forma pauperis*. ECF Nos. 9 and 14. However, in
24 addition to demonstrating the nature of the actions, the entitlement to redress, and the inability to
25 pay, Plaintiff must also demonstrate that he has failed in his "reasonable efforts to retain private
26 counsel." *Wong v. Astrue*, C 08-02432 SBA, 2008 WL 2725824, *5 (N.D. Cal. July 10, 2008);
27 *Thornton v. Schwarzenegger*, No. 10-01583 BTM (RBB), 2010 WL 3910446, *4 (S.D. Cal. October
28 4, 2010) (stating, in a § 1983 case, that "[c]ourts have required that 'indigent plaintiffs make a

1 reasonably diligent effort to secure counsel as prerequisite to the court's appointing counsel for
2 them," citing *Bailey v. Lawford*, 835 F.Supp. 550, 551 (S.D. Cal. 1993)). Plaintiff does not discuss
3 any attempts to secure counsel prior to filing his present request. ECF No. 15.

4 Plaintiff claims he also meets the "exceptional circumstances" test, which he must do before
5 the Court will appoint counsel. 28 U.S.C. § 1915(d); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th
6 Cir. 1991); *Richards v. Harper*, 864 F.2d 85, 87 (9th Cir. 1988). The Ninth Circuit does a two-prong
7 evaluation when determining whether "exceptional circumstances" are present. Specifically, the
8 Court must evaluate "the likelihood of success on the merits *and* the ability of the petitioner to
9 articulate his claims *pro se* in light of the complexity of the legal issues involved." *Terrell*, 935 F.2d
10 at 1017 (citation omitted) (emphasis added). "Neither of these factors is dispositive and both must
11 be viewed together before reaching a decision on [a] request [for] counsel." *Wilborn v. Escalderon*,
12 789 F.2d 1328, 1331 (9th Cir. 1986).

13 The Court has evaluated Plaintiff's arguments and finds he states a reasonable likelihood of
14 success on the merits in his claim. However, the complexities of the issues Plaintiff presents are not
15 exceptional when compared to the difficulties faced by most other *pro se* prisoner litigants. ECF
16 No. 9; *Housewright*, 900 F.2d 1332, 1335 (9th Cir. 1990) (explaining that prisoner litigants' lack of
17 a legal education does not constitute "exceptional circumstances"); *Zamara v. Moonga*, 656 F.
18 App'x 297, 299 (9th Cir. 2016) (explaining that lack of adequate knowledge of "complex legal and
19 medical issues" is not an exceptional circumstance "in light of the legal competence of most
20 prisoners in similar situations."); *Sands v. Lewis*, 886 F.2d 1166, 1169 (9th Cir. 1989) ("the
21 Constitution does not require the elimination of all economic, intellectual, and technological barriers
22 to litigation"). That is, Plaintiff argues he has limited access to the law library and limited knowledge
23 of the law. ECF No. 15. Plaintiff further asserts that his case, were it to go to trial, would involve
24 conflicting testimony that would be better handled by counsel. ECF No. 15. At present, neither of
25 these claims demonstrate an exceptional circumstance.

26 Plaintiff's case is just commencing. Service of Defendants was recently ordered and is
27 ongoing. ECF No. 14. Those Defendants served have not answered or otherwise responded to
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1 Plaintiff's Amended Complaint. Finally, Plaintiff has not demonstrated any attempt to secure
2 counsel or that his case involves such extraordinary circumstances that appointment of counsel is
3 warranted.

4 Accordingly,

5 IT IS HEREBY ORDERED that Plaintiff's Motion for Appointment of Counsel is DENIED
6 without prejudice. Should this matter evolve into a more complex set of facts, Plaintiff is free to
7 seek appointment of counsel again in the future.

8 IT IS FURTHER ORDERED that the Clerk of the Court shall send a copy of this Order to
9 Plaintiff at the following address:

10 Sally D. Villaverde #81701
11 High Desert State Prison
12 P.O. Box 650
Indian Springs, NV 89070-0650

13 DATED: December 26, 2019
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16 ELAYNA J. YOUCHAH
17 UNITED STATES MAGISTRATE JUDGE
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